Kaysville City Administrative Law Judge
Appeal Hearing Notice and Agenda

The Kaysville Administrative Law Judge will hold an appeal hearing on the topic listed below on Wednesday, November 9, 2022, at 2:00 p.m. in the Council Chambers of the Kaysville City Municipal Building located at 23 East Center Street. The public is encouraged to attend in person. This meeting will *not* be live streamed.

This meeting is not a public hearing and only the parties involved in the appeal will be allowed to speak.

AGENDA:

1. Opening

2. Appeal of Conditional Use Permit for multiple family dwellings issued by the Planning Commission on September 8, 2022 for the property located at 146 East 200 North in Kaysville, Utah, 84037

3. Closing and adjournment

On Monday, November 7, 2022, a Notice of Meeting was posted in accordance with Utah State Code Section 52-4-202 (3).

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November 14, 2022

Steve & Linda Gerner, Appellants
Michael and Marsha Cook, Appellants
Kaysville City, Appellee

[redacted]

Weston Ridd, Property Owner

Re: Appeal of Conditional Use Permit

Dear All:

This letter contains the final decision of the Kaysville City Administrative Law Judge ("ALJ") in the matter of the appeal brought by Steve & Linda Gerner and Michael & Marsha Cook (together "Appellants"), seeking review of the Conditional Use Permit granted by Kaysville City ("City" or "Appellee") on September 8, 2022, for multiple family dwellings located at 146 East 200 North, Kaysville Utah (the "CUP").

An appeal hearing occurred, attended by all parties, on November 9, 2022. In preparing this decision, the ALJ reviewed the information obtained at the appeal hearing, as well as the following documentation:

- Appeal letter and argument dated September 14, 2022, submitted and signed by Appellants;
- Undated and unsigned response letter and argument submitted by Kaysville City;
- Kaysville City Planning Commission Meeting Minutes, dated September 8, 2022;
- Staff Presentation (PowerPoint) prepared for Planning Commission Meeting;
- Planning Commission Staff Report, dated September 6, 2022.

In addition, the ALJ reviewed the case law, statutes, and City ordinances applicable to this matter. After careful consideration, the ALJ concludes for the reasons stated below that the City properly granted the CUP, and therefore the CUP should not be overturned on the issues raised in this Appeal. Accordingly, this appeal is denied.

Background

Non-party Weston Ridd is the owner of a parcel at 146 East 200 North, Kaysville. The parcel is in the City's R-D zone, is 25,700 s/f in size, and is occupied by a single family home. Mr. Ridd desires to develop his property, and was told by the City that his property must be rezoned to allow multiple townhome dwelling units on the parcel. Later, upon review of the zone change application, City staff determined that a zone change was unnecessary because the present zoning would conditionally allow the requested use. Upon notification thereof, Mr. Ridd changed his application to a conditional use permit application, and the City refunded difference between a conditional use permit application fee and a zone change application fee.

The City Planning Commission reviewed Mr. Ridd's CUP application on September 8, 2022. The record shows that some of the Appellants expressed concerns regarding the multi-family use during the public hearing. At the conclusion of the discussion, the Planning Commission voted 4-3 to grant the Conditional Use Permit (with conditions). The Appellants then timely filed this Administrative Appeal.

Controversy

This controversy centers around the interpretation of Kaysville City Code 17-13-4. This section provides the list of conditional uses applicable to the R-D zone. The entire ordinance is reproduced in its entirety here, with the critical phrase highlighted:

17-13-4 Conditional Uses

Compliance with standards shall be determined by the Planning Commission by reference to KCC 17-30.

1. Multiple dwellings, not to exceed six (6) dwelling units per building, legally existing upon the effective date of this Chapter. The lot area shall be not less than eight thousand (8,000) square feet for a two-family dwelling, ten thousand (10,000) square feet for a three-family dwelling, twelve thousand (12,000) square feet for a four-family dwelling, fourteen thousand (14,000) square feet for a five-family dwelling, and sixteen thousand, eight hundred (16,800) square feet for a six-family dwelling.
2. Public or quasi-public buildings of the educational, recreational, religious, cultural, or public service type, not including corporation yards, storage or repair yards, warehouses, and similar uses.
3. Major home occupations A and B subject to the provisions of KCC 17-26.
4. Instructional Home Occupation Subject to the provisions of KCC 17-26.
5. Residential childcare subject to the provisions of KCC 17-26.
6. Twin homes subject to the provisions of KCC 17-28. Must also be permitted as two-family dwellings.
7. Farm animals other than those allowed as a permitted use subject to the provisions of KCC 17-24.
8. Swimming clubs subject to the provisions of KCC 17-31-10.
9. Public utility substations subject to the provisions of KCC 17-31-15.

At issue is the meaning of the phrase "legally existing upon the effective date of this Chapter." The Appellants argue that this phrase is in essence a grandfathering clause, limiting the conditional uses for multiple dwellings to those that were already in existence as of the Chapter's effective date (several years ago). Thus, appellants conclude, this phrase prevents all new conditional use permits for multiple family dwellings from being granted in this zone. In other words, this language is a prohibition on future multiple dwellings.

Conversely, the City argues that this phrase is ambiguous, and cannot be given meaningful legal effect. The City bases this argument of the fact that this phrase is incapable of a plain meaning interpretation in the context of the conditional use ordinance. Accordingly, the City argues, the ordinance must be interpreted to favor the property owner.

Decision

The Utah legislature has provided instructions regarding the proper interpretation of land use ordinances. UTAH CODE § 10-9a-306 first states:

(1) A land use authority shall apply the plain language of land use regulations.

Utah case law fleshes this first provision out a little further. It states that the primary goal is to use the plain language to "give effect to the . . . intent in light of the purpose that the [ordinance] was meant to achieve." *Carrier v. Salt Lake County*, 2004 UT 98, ¶ 30, 104 P.3d 1208. Moreover, all parts should be given meaning and effect if possible: "[E]ffect should be given to each such word, phrase, clause, and sentence where reasonably possible." *Sindt v. Retirement Board*, 2007 UT 16, ¶ 8, 157 P.3d 797, 799. Also, we are to "read the plain language of the [ordinance] as a whole, and interpret its provisions in harmony with other [ordinances] in the same chapter and related chapters." *Foutz v. South Jordan*, 2004 UT 75, ¶ 11, 100 P.3d 1171.

With those principles in mind, section (2) of the statute further states that:

> (2) If a land use regulation does not plainly restrict a land use application, the land use authority shall interpret and apply the land use regulation to favor the land use application.

(Emphasis added.) Accordingly, while attempting to give all sections of a code meaning according to their plain language and context, local codes must *plainly restrict* what the applicant desires to do. If it does not, the City is obligated to apply its land use regulation to favor the land use application.

Prohibiting multiple family dwellings is a restriction on the use of land. Such restrictions are required by law to be plain. The Appellants in this matter offered testimony that the City intended the phrase "legally existing upon the effective date of this Chapter" to prohibit any future multiple family dwellings in the zone. The City conceded that this was the intent. However, even assuming that this this testimony of intent is completely true, that purported intent is not plainly expressed in this ordinance. Especially in light of the requirement that we must interpret provisions in harmony with other provisions of the same chapter.

It is possible to read this phrase as stating that conditional use permits may only be granted to multifamily homes that already exist. However, such a reading requires significant contortions. First, one must ignore the context from the remainder of the very same subsection. Also, one must find and assume the antecedent of *existing*, one must determine the meaning of *date of the Chapter*, one must search in vain for any restrictive language, *etc*. A plainer restriction could have easily been placed nearly anywhere in the City code, such as "New multiple family dwellings are prohibited in this zone." This would have met the statute.

In contrast, this phrase "legally existing upon the effective date of this Chapter" cannot be reconciled with the rest of the ordinance section. This City code section lists nine conditional uses in the zone. Multiple family dwellings is one of those conditional uses. The code goes further by listing the particular lot sizes available for particular multi-family buildings. In Utah, when a land use ordinance lists a conditional use, the City must approve that use if conditions are able to be imposed. UTAH CODE § 10-9a-507. In other words, by listing a conditional use, City is saying that "This use is allowed here, with certain conditions." Thus, having listed this multi-family use as a conditional use in this zone, along with providing lot sizes and other details, the City is doing the opposite of what Appellants are espousing. They are not prohibiting this use. They are welcoming it. Moreover, a multifamily building "legally existing as of the date of this chapter" would not even need a conditional use permit. The use would already exist, legal and authorized. A grandfathering clause is not needed because the use is already grandfathered by UTAH CODE § 10-9a-511. Accordingly, this restriction cannot be read in harmony with the rest of the conditional use section. Because of the way conditional uses work in Utah, one must either throw out the "legally existing" phrase, or must throw out the rest of this section of the code. They are irreconcilable, and thus the use is not "plainly restricted."

Finally, Utah state law requires all cities to comply with their own ordinances. UTAH CODE § 10-9a-509(2). Accordingly, because the City has an obligation to follow the law, the City has an obligation to provide applicants with accurate information about its laws. The City indicates that it told the applicant that he needed a zone change. A City is a public body, and must correct itself when errors occur. The City is certainly not required to do an applicant's legal work for them, but a City is obligated not to mislead. Accordingly, the City was within its authority to provide the opportunity for the Applicant to change from a zoning change to the CUP.

In conclusion, the phrase "legally existing upon the effective date of this Chapter" does not "plainly restrict" the requested use. The City was therefore obligated by law to interpret and apply this in favor of the applicant. That is exactly what the City did in this matter. Accordingly, this appeal is denied.

Very truly yours,

DENTONS DURHAM JONES PINEGAR P.C.

Brent N. Bateman